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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

Estate of MARY SLADE,  
Deceased.

B280684

(Los Angeles County  
Super. Ct. No. BP159279)

ANGELA LOWE,

Petitioner and Respondent,

v.

LLOYD ECHOLS,

Contestant and Appellant.

APPEAL from orders and the judgment of the Superior Court of Los Angeles County, William Barry, Judge. Affirmed.  
Mykhal N. Ofili for Contestant and Appellant.  
Stephanie Macuiba for Petitioner and Respondent.

Lloyd Echols appeals the probate court's December 6, 2016 orders and the corresponding judgment entered after trial granting his sister Angela Lowe's petition for probate of the holographic will of their mother, Mary Slade, overruling Echols's objections to the petition and denying his opposition to the probate of the will. Echols contends the probate court failed to apply the common law presumption of undue influence, which would have shifted the burden to Lowe to prove Slade's will had not been procured by undue influence. Echols argues he presented sufficient evidence at trial to warrant shifting the burden, including that Lowe had a confidential relationship with Slade, Lowe actively participated in procuring the will's preparation or execution, and the will unduly benefited Lowe. Because Echols has failed to support his arguments with any citation to the testimony given during the two-day bench trial, he has forfeited this issue on appeal. The probate court's orders and judgment are affirmed.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. The Holographic Will*

Slade, a widow, was diagnosed with cancer in November 2014 and died on December 14, 2014 at the age of 68. She was survived by her three adult children, Lowe, Echols and Pamela Burns.

In a joint trial statement Echols and Lowe agreed a holographic will, dated November 13, 2014, prepared entirely in Slade's handwriting and signed by her, left all her assets to Lowe, including a house on South Orange Drive in Los Angeles, all contents of the house, her other personal property and two burial plots. The will also appointed Lowe to be the executrix of the

estate. On November 17, 2014 Slade executed a grant deed to the South Orange Drive property, naming herself and Lowe as tenants in common.

## *2. The Probate Court Proceedings*

Lowe filed a petition for probate of Slade's holographic will on January 21, 2015. On March 30, 2015 Echols filed an opposition and contest of will. Echols subsequently filed a petition to determine ownership of the South Orange Drive property, and Lowe filed an opposition to that petition. The court conducted an evidentiary hearing in connection with all three matters on December 5 and 6, 2016.

Echols's position, as presented in the parties' joint trial statement, was that Lowe had effectively isolated Slade from other members of her family and that the November 13, 2014 will was either the product of Lowe's undue influence or, alternatively, Slade had given the South Orange Drive property to Lowe to hold for the benefit of all three of Slade's children. Lowe's position was that Slade had intended to leave her the entirety of the South Orange Drive property (which was burdened with a substantial reverse mortgage) and had transferred to Lowe, concurrently with executing the will, one-half the property as a tenant in common for tax purposes. With respect to the issue of undue influence, Lowe intended to present evidence that, although Slade was battling cancer, she was not vulnerable at the time of execution of the will, remaining independent, competent and in good spirits. Slade and Lowe had a close mother-daughter relationship; Lowe respected her mother and her wishes; and after Lowe stepped up to help Slade when she became ill, she did not in any way interfere with Slade's visitors, including Echols.

Both sides presented witnesses in support of their positions. Howard Rumjahn, Slade's friend and financial advisor who had witnessed execution of the will; Crystal Butler, Lowe's daughter; and Lowe each testified in support of Lowe's position. Echols and his daughter, Bria Echols, testified on Echols's behalf.

After hearing closing argument on December 6, 2016, the court granted Lowe's petition to probate Slade's November 13, 2014 will, overruled Echols's objections and denied his contest and opposition to the petition to probate the will, and found the November 17, 2014 grant deed valid and effective. The court admitted the will to probate. The December 6, 2016 minute order states the court's rulings were made "[u]pon consideration of the testimony presented by the parties and consideration of all presented evidence," but does not otherwise explain the basis for the rulings.

Although the minute order simply recites the court's rulings, when issuing those rulings at the close of the evidentiary hearing, the court stated Rumjahn's uncontested testimony was "very credible" and "establishe[d] that up until, perhaps, the last few days, Ms. Slade was alert and in possession of her faculties. But in any event, earlier in November when she discussed this matter [of the will and grant deed] with Mr. Rumjahn, there's no testimony that Angela Lowe or Crystal Butler were involved in the discussions. And I thought that the testimony of the interchange between Mr. Rumjahn and Mary Slade was completely inconsistent with the concept of undue influence. . . . So I think I should find, and do find, that Mr. Echols has failed to carry a burden of proof to establish the will and the deed were executed under duress or any concept of undue influence. I find

that the will and the deed were executed by Mary Slade in a testamentary capacity intending to make the gifts that she did.”

The court additionally found that the allegations that Lowe had restricted access to Slade during the relevant period had not been proved: “There’s no evidence in that time period that she—her access was restricted.”

Judgment following trial was entered on January 5, 2017.

3. *The Record on Appeal, the Parties’ Briefing and Augmentation of the Record*

Echols filed a timely notice of appeal on February 6, 2017. In his notice designating the record on appeal, filed February 10, 2017, Echols checked the box indicating he had elected to proceed without a record of the oral proceedings in the probate court. In doing so Echols acknowledged, “I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.”

On February 13, 2018, prior to the filing of his opening brief on appeal, Echols filed a motion to augment the record to include the reporter’s transcript of the proceedings in the probate court on December 5 and 6, 2016. In support of the motion Echols’s counsel provided a declaration that explained, “I did not order the reporter’s transcript December 05, 2016 and December 06, 2016, thinking it was unnecessary to decide the issues raised on appeal. [¶] . . . I believe the Court failed to apply a presumption of undue influence. The court’s comments before announcing its ruling and after are material to this issue. The transcript of that hearing is therefore a necessary element of that record on appeal.”

On February 15, 2018, two days after filing the motion to augment the record, and before we had ruled on it, Echols filed his opening brief on appeal. The brief contains no citations to the reporter's transcript.

This court granted the motion to augment on March 8, 2018.

Lowe filed her respondent's brief on April 17, 2018. In her brief Lowe argued, in part, that the probate court's judgment should be affirmed because, absent a reporter's transcript at the time of briefing, the record was insufficient for this court to determine whether the probate court had decided that a presumption of undue influence applied but had been adequately rebutted by Lowe or that no presumption applied and Echols had failed to carry his burden of proof.

A one volume, 171-page reporter's transcript of the December 5 and December 6, 2016 proceedings was filed with this court on July 18, 2018. The clerk gave notice of the filing on the same date and stated Echols had 20 days to file a reply brief. No reply brief was filed, and Echols did not supplement his opening brief by adding citations to the reporter's transcript.

### **DISCUSSION**

A will is invalid if procured by the undue influence of another. (Prob. Code, § 6104.)<sup>1</sup> Ordinarily, the person contesting

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<sup>1</sup> Probate Code section 86 provides that "undue influence" has the same meaning as defined in Welfare and Institutions Code section 15610.70. Subdivision (a) of section 15610.70 states, "Undue influence' means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity." Subdivision (a) identifies four factors to be considered in determining whether a

the validity of a will bears the burden of proving undue influence. (Prob. Code, § 8252, subd. (a).) However, “a presumption of undue influence, shifting the burden of proof, arises upon the challenger’s showing that (1) the person alleged to have exerted undue influence had a confidential relationship with the testator; (2) the person actively participated in procuring the instrument’s preparation or execution; and (3) the person would benefit unduly by the testamentary instrument.” (*Rice v. Clark* (2002) 28 Cal.4th 89, 97; see *Bernard v. Foley* (2006) 39 Cal.4th 794, 800.)

Echols’s appeal rests entirely on the contention the probate court failed to properly apply the common law presumption of undue influence described in *Rice v. Clark, supra*, 28 Cal.4th 89. However, as we, but not Echols, discussed, the probate court found that Lowe had not actively participated in procuring the preparation or execution of the November 13, 2014 will, one of the three necessary factors for application of the presumption. Echols does not challenge that finding as not supported by substantial evidence, nor could he in the absence of a full description of the evidence presented at trial accompanied by proper citations to the reporter’s transcript: “The rule is well established that a reviewing court must presume that the record

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result was produced by undue influence: (1) the vulnerability of the victim; (2) the influencer’s apparent authority, including status as a fiduciary, family member or care provider; (3) the actions or tactics used by the influencer, including controlling the victim’s interactions with others and the use of affection, intimidation or coercion; and (4) the equity of the result. Subdivision (b) of that statute provides, “Evidence of an inequitable result, without more, is not sufficient to prove undue influence.”

contains evidence to support every finding of fact, and an appellant who contends that some particular finding is not supported is required to set forth in his brief a summary of the material evidence upon that issue. Unless this is done, the error assigned is deemed to be waived. [Citation.] It is incumbent upon appellants to state fully, with transcript references, the evidence which is claimed to be insufficient to support the findings.” (*In re Marriage of Fink* (1979) 25 Cal.3d 877, 887; accord, *Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 737.)

It is the duty of an appellant to demonstrate error. Appealed judgments and orders are presumed correct, and error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557; *Rhue v. Superior Court* (2017) 17 Cal.App.5th 892, 897.)

To demonstrate error, an appellant must present both legal analysis and citations to facts in the record that support his or her claim the trial court erred. (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1457-1458.) It is not our obligation as an appellate court to search the record to find facts that pertain to the appellant’s arguments. (See *Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 656 [“[i]t is the appellant’s responsibility to support claims of error with citation and authority; this court is not obligated to perform that function on the appellant’s behalf”].)

Where, as here, the appellant’s argument on appeal is predicated on the testimony at trial, yet there is no citation to the record of that proceeding, we deem the appellant’s contentions to lack foundation and, thus, to be forfeited. (See *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1117; *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647.)

### **DISPOSITION**

The probate court's orders and the judgment are affirmed.  
Lowe is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

FEUER, J.